



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

[Redacted]

[Redacted]

JAN 29 2004

Re: Appeal [Redacted] Case 181397, Noncontributory Pension Plan for Hourly Employees of Edgewater Steel Company (the Plan)

Dear [Redacted]:

The Appeals Board reviewed your appeal of PBGC's December 9, 2002 determination that you were not entitled to a benefit under the Plan. For the reasons stated below, we changed PBGC's determination by finding that you continued to accrue "Continuous Service" for eligibility purposes until the Plan terminated on March 21, 1997, and that you are, therefore, entitled to a vested benefit under the Plan.

As a result of our decision, the Insurance Operations Department (IOD), the PBGC group responsible for issuing benefit determinations, will send you a new determination letter in which they will inform you of the amount of the retirement benefit to which you are entitled under the Plan. The new determination will include a new 45-day right to appeal.

Determination and Appeal

PBGC's letter told you that you were not entitled to a PBGC benefit. It explained that you were ineligible because, when your employment terminated, the Plan required 10 years of service to qualify for a vested pension, and you had only eight years of service. It noted that the eight years included two years of service you accrued while receiving disability payments and that for pension purposes, service accrual ended after two years of inactive service.

Your December 28, 2002 appeal stated that from 1978 to 2001, you were permanently disabled and could not work and that the Edgewater Steel Company (Edgewater) did not have a light duty job prescribed by your physician. You maintain that you were never terminated and that crediting of your service never ended. You stated that you continue to receive permanent disability benefit payments from the Liberty Mutual Insurance Company on behalf of Edgewater.

Discussion

1. Employment and Injury

Documents available to the Appeals Board show that you briefly worked for Edgewater from March 10, 1975 to May 31, 1975 when, as a probationary employee, Edgewater let you go because of lack of work. Edgewater rehired you on April 25, 1977. The last entry on your Edgewater employment record is dated January 30, 1978, when you transferred to the Ingot Department. With your authorization, PBGC obtained a record of your earnings as reported to the Social Security Administration (SSA) for the years 1977 through 1997, the year in which the Plan terminated. Your SSA record is formatted to show earnings for each calendar quarter in 1977, but only annual earnings for each subsequent year. The SSA record shows you received earnings from Edgewater for 1977 consistent with your rehiring in the second quarter of 1977. The SSA record also shows full employment, or significant periods of earnings, in 1978, 1979 and 1980. Your SSA-reported earnings declined sharply in 1981 and 1982, and hardly any were reported for 1983. Your SSA record shows no earnings at all for the years 1984 through 1997.

During telephone conversations on February 13, 2003, and March 6, 2003, you told the analyst assigned to your appeal that your back was injured at work on July 26, 1978, and that the injury resulted in removal of a disk. In response to the analyst's request for information regarding cessation of your workers' compensation payments, [redacted]

[redacted] a law firm which represented you in your workers' compensation claim, sent us a letter dated March 18, 2003. [redacted] stated that you were paid workers' compensation benefits for temporary total disability as a result of the July 26, 1978 accident until September 20, 2001, when your claim was resolved by an agreement on a lump-sum payment. [redacted] enclosed a copy of the court decision approving the agreement. He also enclosed copies of three letters you received on different matters in 1996, 1997 and 1998 either as a participant in the Plan or as an employee of Edgewater and stated that you were considered an active employee because you had sustained a work-related injury and were continuing to receive benefits. One of those three letters, a copy of which we have included as our **Enclosure**, is a March 6, 1996 letter from Hallwell & Associates, which indicates that they were performing a study of the feasibility of a "buyout" of the Plan and had estimated ["based on the 1983 Group Annuity Table with an even blend of male and female rates as required by the General Agreement on Tariffs and Trade (GATT) legislation, and a 6.37% interest rate, the GATT interest rate for calculating lumps sums as of October 1995"] that a lump sum of \$17,006 would be

equivalent to the annuity otherwise payable to you as one of Edgewater's "active employees" under the Plan.

2. Plan Provisions

Section 2.11 of the Plan provided, as did the governing documents of the Plan from its inception, that Continuous Service was service from the last date of hire and that there would be no deduction for any time lost which did not constitute a break in Continuous Service, except that the portion of an absence due to a shutdown, layoff or physical disability that continued beyond two years was not creditable as Continuous Service. However, there was an exception to the exception, that being an absence due to a compensable disability incurred at work if the participant returned to work after the final payment of the statutory compensation for disability or after the end of the period used in calculating a lump-sum payment of statutory compensation for disability. Plan Section 2.11 also provided that a Break in Continuous Service would be caused by quit, discharge, termination, or an absence which continued for more than two years. With regard to the latter, an exception provided that there was no Break in Continuous Service for a participant absent due to a compensable disability incurred at work if the participant returned to work after the final payment of the statutory compensation for disability or after the end of the period used in calculating a lump-sum payment of statutory compensation for disability.

Based on the Plan provisions described above and your SSA earnings record, PBGC concluded that you incurred a break-in-service sometime in 1985 or 1986, because you did not return to work with Edgewater after receiving workers' compensation payments.

3. Arbitrator's Decision

If the Appeals Board were to base our review solely on the Plan provisions described above and your SSA earnings record, the Board might agree with PBGC's determination. However, records available to the Board include the actuarial valuation reports (AVRs) prepared by Hallwell & Associates for Plan years 1991 through 1993. In the "Remarks" sections of those AVRs, the Plan's actuaries wrote:

"WORKERS' COMPENSATION

Active participants who go on workers' compensation remain in the active group. This treatment resulted from an arbitration decision that service continues to accrue in this situation."

Furthermore, in the Summaries of Plan Provisions found in each of those AVRs, the Plan's actuaries defined "Continuous Service" as service from the applicable hire date, and stated:

"Service continues to accrue while receiving workers' compensation."

Because the Appeals Board was unable to locate a copy of the arbitrator's decision, the Board does not know the date of the arbitrator's decision and whether the arbitrator's decision should apply to your situation. However, because the Board's review of the history of the Plan's governing documents found that the Plan's provisions have not changed in any meaningful respect since the Plan's inception, and because the March 6, 1996 letter from Hallwell & Associates indicates that Edgewater considered you to be an active employee at that time, the Appeals Board decided that Edgewater likely considered you to be an active employee in March 1996 as a result of applying the arbitrator's decision to your situation. The Board concluded that you accrued "Continuous Service" under the Plan while you were receiving workers' compensation payments until the Plan terminated even though you did not return to work with Edgewater, and that you, therefore, fulfilled the requirements for a vested benefit under the Plan.

Decision

Having applied Plan provisions and PBGC's rules to the facts in this case, the Appeals Board changed PBGC's determination by finding that you continued to accrue "Continuous Service" for eligibility purposes until the Plan terminated, and that you are, therefore, entitled to a vested benefit under the Plan.

When IOD receives a copy of this decision, they will send you a new determination letter in which they will inform you of the amount of the retirement benefit to which you are entitled under the Plan, and other matters. The new determination will include a new 45-day right to appeal.

If you need more information about your benefit, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis
Acting Chair, Appeals Board

Enclosure